

IN THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF  
TEXAS TYLER DIVISION

VINCENT CASARES, #1850085	§	
VS.	§	CIVIL ACTION NO. 6:17cv701
DR. LINTHICUM, ET AL.	§	

ORDER ADOPTING REPORTS AND RECOMMENDATIONS  
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Vincent Casares, an inmate currently confined at the Wayne Scott Unit within the Texas Department of Criminal Justice, (TDCJ), is proceeding *pro se* and *in forma pauperis* in the above styled and numbered civil rights lawsuit. The complaint was referred to the United States Magistrate Judge, the Honorable Judge K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On June 26, 2019, Judge Mitchell issued two Reports. In the first Report (Dkt. #78), Judge Mitchell recommended that Defendants' amended motion to dismiss (Dkt. #47) be granted in part and denied in part. Specifically, Judge Mitchell found that the motion to dismiss should be granted for any claims against all Defendants for monetary damages brought against them in their official capacities. Moreover, she recommended that all claims against Defendant Pace be dismissed with prejudice. Further, Judge Mitchell recommended that Plaintiff's request for injunctive relief should be denied. However, Judge Mitchell recommended that the motion to dismiss be denied in all other respects, and Plaintiff's deliberate indifference claims should proceed before the court.

In the second Report (Dkt. #79), Judge Mitchell recommended that Defendants' second motion to dismiss (Dkt. #48) be granted in part and denied in part. Again, Judge Mitchell found that claims against Defendants for monetary damages brought against them in their official capacities should be dismissed. She also recommended that claims against Defendants

Linthicum, Richardson, and Coleman should be dismissed with prejudice for Plaintiff's failure to state a claim against them upon which relief can be granted. In all other respects, Judge Mitchell found that Defendants' motion to dismiss should be denied and that Plaintiff's claims of medical deliberate indifference and excessive force should remain before the court. Finally, Judge Mitchell recommended that Plaintiff's request for injunctive relief be denied.

Both Reports were sent to Plaintiff and Defendants, return receipt requested. However, to date, no objections to either Report have been filed. Because no objections to Judge Mitchell's Reports have been filed, both parties are barred from *de novo* review by the district court of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The court has reviewed the pleadings in this cause and the Reports of the Magistrate Judge. Upon such review, the court has determined that the Reports of the Magistrate Judge are correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

**ORDERED** that the Reports of the United States Magistrate Judge (Dkt. #'s 78, 79) are **ADOPTED** as the opinions of the court. Further, it is

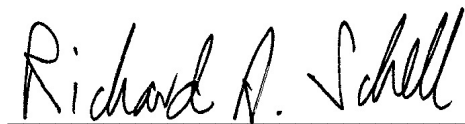
**ORDERED** that Defendants' amended motion to dismiss (Dkt. #47) is **GRANTED** in part and **DENIED** in part. All claims against Defendant Pace are **DISMISSED WITH PREJUDICE**. Any claims against Defendants for monetary damages brought against them in their official capacities are **DENIED**. The Plaintiff's request for injunctive relief is **DENIED**. In all other respects, the amended motion to dismiss is **DENIED**. Plaintiff's

claims of deliberate indifference will proceed before the court. It is also

**ORDERED** that Defendants second motion to dismiss (Dkt. #48) is **GRANTED** in part and **DENIED** in part. Any claims against Defendants for monetary damages brought against them in their official capacities are **DENIED**. Plaintiff's claims against Defendants Linthicum, Richardson, and Coleman are **DISMISSED WITH PREJUDICE** for Plaintiff's failure to state a claim against them upon which relief can be granted. In all other respects, the amended motion to dismiss is **DENIED**. Plaintiff's claims of medical deliberate indifference and excessive force will proceed before the court. Finally, it is

**ORDERED** that because Plaintiff's claims will continue to proceed, Plaintiff's motion for summary judgment (Dkt. #38) is **DENIED**.

**SIGNED this the 27th day of September, 2019.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE